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Front Matter

Compiled Edition of the Civil Codes of Louisiana  
(1940)

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# Front Matter

Louisiana

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LOUISIANA LEGAL ARCHIVES

Volume 3

Part I

Compiled Edition  
*of the*  
Civil Codes of Louisiana

*Prepared by*

THE LOUISIANA STATE LAW INSTITUTE

*at the direction of*

THE EDITORIAL COMMITTEE

*and*

E. A. CONWAY, *Secretary of State*

E. A. CONWAY, JR., *Secretary of State (Feb. 22 to May 17, 1940)*

Published Pursuant to Act 165 of the  
Legislature of Louisiana of 1938

JAMES A. GREMILLION, *Secretary of State*

Baton Rouge, Louisiana

1940

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By

The State of Louisiana

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LOUISIANA STATE LAW INSTITUTE  
THE ADVISORY COMMITTEE  
FOR THE  
COMPILED EDITION OF THE CIVIL CODES

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ACT 165 OF 1938

AN ACT

To provide for the publication of a compiled edition of the Civil Codes of the State of Louisiana, containing the texts of the Civil Code of 1870, the Civil Code of 1825, the Civil Code of 1808 and the corresponding articles or provisions of the Code Napoleon and authorizing the distribution of the series of state publication known as Louisiana Legal Archives.

Section 1. Be it enacted by the Legislature of Louisiana, That, in accordance with the request of the editorial committee appointed by the Governor pursuant to the provisions of Act No. 286 of 1936, the Secretary of State is hereby authorized and instructed to have published, at the expense of the State Printing Board, a compiled edition of the Revised Civil Code of 1870 which shall contain, in addition to the Civil Code of 1870, the corresponding texts or articles of the Civil Codes of 1825, the Civil Code of 1808 and the corresponding articles or provisions of the Code Napoleon.

Section 2. The compiled edition of the Louisiana Civil Codes herein authorized shall be designated as Louisiana Legal Archives Volume 3; Volumes 1 and 2 in said series being the reprinted Projects of the Civil Code of 1825 and of the Code of Practice of 1825, reprinted under authority of Act 286 of 1936. All official publications now or hereafter printed as Louisiana Legal Archives shall be distributed by the Secretary of State to members of the Legislature, public officials and to members of the State Bar of Louisiana in good standing and additional remaining copies shall be sold and distributed by the Secretary of State, at a price to be fixed by the State Printing Board, and all sums received from the sale thereof shall be paid into the General Fund.

Section 3. The editorial committee of three appointed by the Governor of the State, under the provisions of Act No. 286 of 1936 shall assist the Secretary of State in the preparation of such indices, comparative tables and prefatory historical notes, as may be necessary and proper. The Secretary of State and the editorial committee may designate the Louisiana State Law Institute as an agency to perform the necessary editorial work.

Section 4. That all laws or parts of laws in conflict herewith be, and the same are, hereby repealed.

Approved by the Governor: July 2, 1938.

A true copy:

E. A. CONWAY,  
Secretary of State.



## THE EDITORIAL COMMITTEE

Appointed under Act 286 of 1936

GASTON L. PORTERIE

JOHN H. TUCKER, JR.

WILLIAM H. BYRNES, JR., *Chairman*

EXTRACT OF MINUTES OF A MEETING OF THE EDITORIAL COMMITTEE  
APPOINTED BY THE GOVERNOR UNDER THE PROVISIONS OF ACT 286 OF  
1936, AND AUTHORIZED BY ACT 165 OF 1938.

### RESOLUTION

“Mr. Tucker introduced the following resolution, and upon his motion, seconded by Judge Byrnes, the resolution was unanimously adopted, and approved by the Secretary of State:

*“Be it resolved by the Editorial Committee under the provisions of Act 286 of 1936, that the Louisiana State Law Institute be, and it is hereby designated as the agency to perform the necessary editorial work for the preparation and publication of a compiled edition of the Civil Codes of the State of Louisiana, containing the texts of the Civil Code of 1870, the Civil Code of 1825, the Civil Code of 1808 and the corresponding articles or provisions of the Code Napoleon, as authorized under the provisions of Act 165 of 1938, which compilation when published shall be designated as Louisiana Legal Archives, Volume 3.”*

I hereby certify that the above is a true and correct copy of an extract of the minutes of the Editorial Committee appointed by the Governor under the provisions of Act 286 of 1936, and authorized by Act 165 of 1938, held on the 1st day of September, 1938, in the office of the Attorney General in New Orleans, Louisiana.

(sd) EUGENE A. CONWAY, JR.  
*Secretary, Editorial Committee*

Baton Rouge, Louisiana  
September 19, 1938.



# THE LOUISIANA STATE LAW INSTITUTE

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\*Appointed Judge of the United States District Court for the Western District of Louisiana,  
February 9, 1939.



## FOREWORD

The publication of this Compiled Edition of the Civil Codes of the State of Louisiana was authorized and ordered by Act 165 of the Legislature of Louisiana for 1938. The statute prescribes that this compiled edition shall contain the texts of the Revised Civil Code of 1870, the Civil Code of 1825, the Civil Code of 1808, and corresponding articles or provisions of the Code Napoleon, and shall be designated as volume 3 of the series of Louisiana Legal Archives, the first two volumes of which were reprints of the Projets of the Civil Code and Code of Practice of 1825.

This work is calculated to be of great value to the legal profession and to the courts. In order to understand fully and to apply the jurisprudence of Louisiana interpreting the Civil Code, it is necessary to consult the texts prevailing at the time of the decisions. Of these texts, the Codes of 1808 and 1825 are so rare that there are very few libraries in the State which contain them.

A great part of the Louisiana Civil Code is derived from the Code Napoleon. Consequently the French doctrine and jurisprudence often assume critical importance in the interpretation of the Louisiana Code and it is important to refer to the text of the Code Napoleon. The English translations of the Code Napoleon have not always used the terminology of the civilian; in the preparation of this compiled edition of the Codes, corresponding articles of the Code Napoleon have been translated in terms familiar to Louisiana lawyers.

Sometimes the Louisiana Code of 1825 follows recommendations appearing in the Projet of the Code Napoleon (Projet du Gouvernement, or Projet de l'An VIII) which were not adopted in the definitive text of the Code Napoleon. In such cases, the text and translations of corresponding articles of the French projet are given.

The text of the Civil Code of 1870 has undergone many changes in detail since its adoption, and all such amendments are shown in full, including those of the Legislature of 1938.

Therefore, in this compiled edition of the Codes it is now possible to see at a glance the complete textual history of the articles of the Civil Code, without the necessity of consulting a large number of books, many of which are accessible only with the greatest difficulty.

It is generally admitted that the Code of 1825 was originally written in French and that the English text is the translation. There are many errors of translation, some of which are of much consequence. In this edition of the Codes, these errors of translation have been noted for the benefit of the profession and the courts.

The cross-references to other articles of the Code of 1870 will, it is believed, increase the value of the work.

The Editorial Committee of Three, appointed by the Governor under the provisions of Act 286 of 1936, was instructed to assist the Secretary of State in the preparation of the work and, also, permission was given to the Secretary of State and the Editorial Committee to designate the Louisiana State Law Institute as an agency to perform the necessary editorial work.

## ESTABLISHMENT, ORGANIZATION AND PURPOSES OF THE LOUISIANA STATE LAW INSTITUTE

The Louisiana State Law Institute, sponsored by authority of the Board of Supervisors of the Louisiana State University and Agricultural and Mechanical College, and domiciled at the Law School, was "chartered, created and organized as an official advisory law revision commission, law reform agency and legal research agency of the State of Louisiana," by Act 166 of the Legislature of Louisiana of 1938.

An earlier proposal to organize an institute for legal research was authorized by the Board of Supervisors of Louisiana State University early in 1933 and considerable attention was given to the formulation of plans for its organization by Professor James Barclay Smith, then of the Law Faculty, and a committee of lawyers composed of Henry P. Dart, Sr. and Chas. E. Dunbar, Jr., of New Orleans, Cecil C. Bird, of Baton Rouge, John H. Tucker, Jr., of Shreveport, and Horace H. White, of Alexandria. Unfortunately, the critical financial condition which shortly thereafter prevailed throughout the country caused the postponement of that projet, and it was not revived until the Board of Supervisors again authorized the organization of the Institute in 1938. Recognition by the Legislature soon followed.

According to its legislative charter, the governing body of the Institute is its Council, selected as to make it fairly and generally representative of the State Government, the Bench, the Bar and the Law Faculties of the State.

The Attorney General and the Executive Counsel to the Governor are ex-officio members.

The legislature is represented by the chairman of each judiciary committee in the Senate and House, who serve ex-officio.

The courts are represented by one justice of the Supreme Court, one of the Federal Judges in Louisiana, one District Judge, and one Judge from the Courts of Appeal.

The President of the Louisiana State Bar Association and of the State Bar of Louisiana, and Louisiana members on the Council of the American Law Institute, and the Director of the Louisiana State Law Institute are ex-officio members.

The law faculties of Tulane University, Loyola University of the South, and Louisiana State University are represented by the deans of their law schools, who are ex-officio members, and by three members from each of their law faculties, who are elected members.

Eleven practicing attorneys are elected members.

The terms of elected members are four years, arranged so that the terms of six members expire every year.

There are two classes of members in the Institute—active members and associate members. The active membership consists of one hundred and fifty practicing lawyers, of at least ten years' experience,



who are nominated by a membership committee, and elected by the Council.

All judges of the district courts and courts of appeal, all justices of the Supreme Court of Louisiana, all federal judges in Louisiana, all members of the Legislature who are lawyers, and all members of the law faculties of Tulane University, Loyola University of the South, and Louisiana State University are associate members.

The general purposes for which the Institute was formed, and its duty looking toward their accomplishment, are fully stated in Section 4 of its Charter (Act 166 of 1938) which reads:

“Section 4. The general purposes for which the Louisiana State Law Institute is formed are to promote and encourage the clarification and simplification of the law of Louisiana and its better adaptation to present social needs; to secure the better administration of justice and to carry on scholarly legal research and scientific legal work. To that end it shall be the duty of the Louisiana State Law Institute:

1. To consider needed improvements in both substantive and adjective law and to make recommendations concerning the same to the Legislature.
2. To examine and study the Civil Law of Louisiana and the Louisiana jurisprudence and statutes of the State with a view of discovering defects and inequities and of recommending needed reforms.
3. To cooperate with the American Law Institute, the Commissioners for the Promotion of Uniformity of Legislation in the United States, bar associations and other learned societies and bodies by receiving, considering and making reports on proposed changes in the law recommended by any such body.
4. To receive and consider suggestions from judges, justices, public officials, lawyers and the public generally as to defects and anachronisms in the law.
5. To recommend from time to time such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of the State of Louisiana, both civil and criminal, into harmony with modern conditions.
6. To render biennial reports to the Legislature of Louisiana, and if it deems advisable to accompany its reports with proposed bills to carry out any of its recommendations.
7. To make available translations of Civil Law materials and commentaries and to provide by studies and other doctrinal writings, materials for the better understanding of the Civil Law of Louisiana and the philosophy upon which it is based.
8. To recommend the repeal of obsolete articles in the Civil Code and Code of Practice and to suggest needed

amendments, additions and repeals.

9. To organize and conduct an annual meeting within the State of Louisiana for scholarly discussions of current problems in Louisiana law, bringing together representatives of the Legislature, practicing attorneys, members of the bench and bar and representatives of the law teaching profession."

The first meeting of the Council was held at Baton Rouge on January 28, 1939, when its by-laws were adopted and its organization perfected. The first annual meeting of the Institute was held at Baton Rouge on March 16, 1940.

This Compiled Edition of the Civil Codes is the first work of the Institute, authorized by the Council at its first meeting. That it has been so thoroughly accomplished with such expedition is largely due to the industry, scholarship and organizing ability of Professor Joseph Dainow, the reporter charged with the responsibility of its preparation, and the able assistance rendered him by his advisers, research assistants and staff.

Tribute should also be given to the late E. A. Conway, who while Secretary of State rendered invaluable assistance in the solution of many practical problems which arose in connection with the republication of the Projets of the Civil Code of 1825 and the Code of Practice of 1825 and the compilation and publication of the present work.

As a part of this undertaking, Professor Dainow and his advisers expect to prepare a special report on errors in translation discovered in the course of the work. This report would be given careful consideration by the Institute and might result in the submission of corrective recommendations to the legislature.

In the course of the present work, a very substantial part of the Code Napoleon has been translated in civil law terminology. As an incident of the Compiled Edition of the Louisiana Civil Codes, the Institute expects to complete this translation which it feels may more nearly approximate the equivalents of the original text and which will be of interest beyond the borders of Louisiana.

This Compiled Edition of the Civil Codes, together with the Projet of the Civil Code of 1825, republished by the State under the provisions of Act 286 of the Legislature of 1936, now makes generally and readily available the basic books with which to make a critical study of the Civil Code and its interpretative jurisprudence. This work is dedicated to the perpetuation of the civil law heritage of Louisiana, of which its people are justly proud.

#### THE EDITORIAL COMMITTEE

W. H. BYRNES, JR., *Chairman,*

GASTON L. PORTERIE,

JOHN H. TUCKER, JR.,

EUGENE A. CONWAY, JR., *Secretary.*

## EXPLANATORY NOTES

### ON THE FORM AND TEXTS USED IN THE PRESENT WORK

In preparing this Compiled Edition of the Civil Codes of Louisiana, two main purposes were kept in mind: principally, of course, to compile the respective texts of the articles so as to have the complete history and development of each one; incidentally, to provide for the profession an edition of the Louisiana Civil Code as amended to date. In order to make the work readily usable as the latest edition of the Louisiana Civil Code the present text is given first in heavy type, and then each of the historical steps is given in turn in lighter type. Thus the general format of the materials on each article conforms to the following plan:

1. Revised Civil Code of Louisiana with present text (including the amendments of 1938; the amendments of 1940 to Part I of this work will be contained in an appendix at the end of Part II);
2. Cross-references to other current provisions of the Revised Civil Code, the Code of Practice, the Revised Statutes of 1870, the session laws, and the Constitution;
3. Statutory amendments since 1870;
4. Revised Civil Code of 1870 (official edition); with references, where useful, to the "Proposed Revision of 1869";
5. Civil Code of 1825 (official edition; English and French); with references to the "Projet";
6. Civil Code of 1808 (official edition; English and French);
7. Corresponding articles, if any, of the Code Napoleon (official edition, 1804; French with English translation);
8. Relevant articles of the *Projet du Gouvernement*, 1800, (French with English translation), in the absence of corresponding Code Napoleon articles, or when closer than the Code Napoleon to the text of the Louisiana Civil Code.

The English and French versions of the same article are placed in opposite columns not only to facilitate their comparison, but also to facilitate the comparison of the successive English or French texts of corresponding articles in all the different sources.

Where the text of a code article is the same in wording as that of the corresponding article of the next succeeding code, the article is not rewritten; the notation "Same as above" is substituted for the text of the earlier code, with mere differences in punctuation noted, unless it would be shorter to rewrite the text. Differences in the use of capitals and in spelling, due to the change in usage between publications of the various Codes, are not indicated because they have no

bearing on the meaning of the articles; where the Civil Code of 1808 differs from the Civil Code of 1825 only in the use of "territory" instead of "State," due to the difference in the political constitution of Louisiana, this is indicated without rewriting the article in full.

Where the official editions or amending Acts contain typographical errors, the correct spelling is given in brackets [ ] immediately following the error. Mistakes in accenting words, so frequent in the official French text of the Civil Code of 1825, are corrected without notation, unless the change in accent would change the meaning of the word or words, in which case the correction is noted.

References to Acts of Louisiana, wherever possible or practical, are made to the specific pertinent sections, but in all cases the entire Act should be considered to determine its effect on the provisions of the Codes. In indicating these Acts, the word "same" is used to indicate the identical or practically identical terminology between the article and the statute; "similar" indicates a similarity, less than identity, in meaning and terminology; "analogous" means that the statute covered the same situation as that covered by the article, but it is neither the "same" nor "similar" in terminology nor does it, in some cases, contain the same provisions of law. The words "in conformity with" are used to indicate an amendment or change in the wording of an article in order to make the article agree with the provisions of the statute to which reference is made.

In references to the Projet, "Amendment adopted" and "Amendment rejected" indicate an amendment to the Civil Code of 1808, which was proposed in the Projet, and adopted or rejected in the final redaction of the Civil Code of 1825. "Addition adopted" and "Addition rejected" indicate proposed additions or new articles to be inserted in the Civil Code of 1825, which were adopted or rejected in the final redaction. The same forms are used in indicating substitutions proposed in the Projet. "Addition (amendment, substitution) amended and adopted" indicates substantial change in English and French texts of proposed articles before adoption, and "Addition (amendment, substitution) amended in English (French) text and adopted" indicates change in the specified text before adoption; unimportant changes in wording are indicated by the symbol ‡ (e. g., Addition ‡ adopted). The reference also notes whether there is a "comment by redactors" in the Projet or "no comment."

With regard to the English translations of the Code Napoleon, the following explanation is necessary. Since all three available translations were made by common law lawyers who used common law terminology, no one of these has been accepted for general purposes. These translations were freely consulted and borrowed from, but the Louisiana State Law Institute has taken it upon itself to follow the official English terminology of the Louisiana Civil Codes where the French text is the same as that of the Code Napoleon, and in general to adhere more closely to the English terminology of the Louisiana Civil Code where this is not incorrect. Whenever the translation of an article has been adopted from one of the existing translations, proper acknowledgment has been made (B. I. T., B. W., or C.). In particular,

it has been the policy to avoid common law terminology and in preference to use that of the civil law.

The text of the *Projet du Gouvernement* is that found in Fenet, *Recueil Complet des Travaux Préparatoires du Code Civil*, vol. 2 (Paris, 1836). A comparison showed this text to be the same as the original official edition of 1800. The English translations are those of the Louisiana State Law Institute, no English translation being available. Here again, it was the policy to use the English terminology of the Louisiana Codes where this is not incorrect.

The statute (Acts 1938, No. 165) which provides for the present compilation does not include Spanish source materials within the scope of this work. In excluding Spanish references the Committee does not mean to deny their influence in the Civil Code; and it is hoped that some day this phase of Louisiana's legal history will be developed more fully.

The appendices at the end of Part II of this work will include: (1) the amendments of 1940 to Articles 1-1755 printed in Part 1; (2) provisions of the Civil Codes of 1825 and 1808 which do not appear in the main work because they do not correspond to any texts of the Revised Civil Code of 1870; (3) a complete Concordance between the Revised Civil Code of 1870, the Civil Code of 1825, the *Projet*, the Civil Code of 1808 and the Code Napoleon. Finally, there will be an Index for the entire work.

JOSEPH DAINOW

*Reporter, Advisory Committee*



## ABBREVIATIONS

- RCC 1870 — Louisiana Revised Civil Code of 1870.
- CC 1825 — Louisiana Civil Code of 1825.
- CC 1808 — A Digest of the Civil Laws Now in Force in the Territory of Orleans; 1808. Commonly called the “Civil Code of 1808.”
- CN 1804 — Code Civil des Français; Paris, 1804. Commonly called the “Code Napoleon.”
- Projet — Additions and Amendments to the Civil Code of the State of Louisiana, by the Jurists Commissioned for that Purpose; 1823. Republished by the State of Louisiana as Louisiana Legal Archives, volume 1, 1937. Commonly called the “Projet of the Civil Code of 1825”, or “The Projet.”
- Projet du Gouvernement (1800)—Projet de Code Civil, Présenté par la Commission nommée par le Gouvernement. Commonly called the “Projet de l’An VIII”, “Projet de la Commission du Gouvernement”, or “Projet of the Code Napoleon.”
- Proposed Revision of 1869—The Civil Code of the State of Louisiana, Revised, Arranged and Amended by the Hon. John Ray, Reviser of the Statutes and Codes, under the Supervision of the Joint Committee of Revision; 1869.
- B.I.T. — The Code Napoleon or French Civil Code, translated into English by a Barrister of the Inner Temple; London, 1827.
- B.W. — The French Civil Code, translated into English by Blackwood Wright; London, 1908.
- C. — The French Civil Code, translated into English by Cachard; revised edition, Paris, 1930.
- Const. 1921 — Louisiana Constitution of 1921.
- CP — Louisiana Code of Practice of 1870.
- RS — Louisiana Revised Statutes of 1870.
- ‡ — Unimportant amendment in the wording of the text proposed in the Projet, prior to its adoption as part of the Civil Code of 1825.





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